

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Statement

STATEMENT OF
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IN THE
BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS
BEFORE THE HOUSE COMMITTEE ON RESOURCES
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS
MARCH 11, 1999

TESTIMONY

Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to appear before the Subcommittee to support the reauthorization of the Yukon River Salmon Act and the Fishermen's Protective Act, as well as extension of the 1988 Agreement Between the United States and Russia on Mutual Fisheries Relations. In the view of the Department of State, reauthorization of these laws and extension of the 1988 Agreement will each promote U.S. interests in the field of international fisheries.

Yukon River Salmon Act

The Yukon River is one of the longest rivers in the world, rising in Western Canada and traversing the heart of Alaska before emptying into the Bering Sea. Salmon that spawn in the Yukon River constitute a critical resource for both subsistence communities and small-scale commercial harvesters who live in that region.

Returning runs of salmon that spawn in the Canadian portion of the Yukon River are, in effect, a shared resource, subject to harvesting by both U.S. and Canadian fishers. For this reason, the United States and Canadian Governments have long recognized the need to cooperate in the conservation and management of Canadian-origin Yukon River salmon. Were either country to permit overfishing of this resource or degradation of its habitat, fisheries in both countries would suffer.

In 1995, after several years of negotiation, the United States and Canada concluded an "Interim Agreement"

on Yukon River salmon. The Agreement was "interim" in the sense that it reflected the resolution of many, but not all, of the differences in position between the two countries. The primary purpose of the Interim Agreement was to create bilateral "rebuilding programs" for runs of Canadian-origin chinook and chum salmon, which, as of the early 1990's, had fallen considerably below their historical levels of returns. To this end, the Interim Agreement called upon the United States, through the Alaska Department of Fish and Game, to manage its Yukon River salmon fisheries with the aim of allowing a certain number of returning chinook and chum salmon to reach the Canadian border. Canada, in turn, undertook commitments to limit its salmon fisheries with the aim of allowing an appropriate number of those same salmon to reach their spawning grounds. The Interim Agreement also established a bilateral Yukon River Panel with a mandate to develop cooperative programs to promote the conservation and management of the salmon resource.

The Interim Agreement did not, however, resolve a number of key issues, particularly the formula for the long-term sharing of Canadian-origin salmon once the runs were rebuilt. Instead, the two countries agreed to a two-track process: to work together in implementing the Interim Agreement and to continue to seek agreement on a long-term arrangement.

Following conclusion of the Interim Agreement, Congress enacted the Yukon River Salmon Act as part of the Fisheries Act of 1995 (P.L. 104-43) to implement that Agreement and for related purposes. In particular, the Yukon River Salmon Act:

- provided for the appointment of U.S. representatives on the Yukon River Panel;
- created an advisory committee for Yukon River salmon issues; and
- authorized the appropriation of \$4 million, including \$400,000 to be contributed in each of the fiscal years 1996, 1997, 1998 and 1999 to the Yukon River Restoration and Enhancement Fund that was created by the Interim Agreement.

In our view, the Interim Agreement proved to be a real success. The Yukon River Panel was duly established and provided a forum for enhanced cooperation between the United States and Canada. Contributions to the Restoration and Enhancement Fund were used for worthwhile small-scale projects to increase scientific understanding of the salmon resource and to improve its conservation and management. The Interim Agreement also served as a mechanism to generate understanding among the users of the salmon resource on both sides of the border.

Unfortunately, the efforts of the United States and Canada to resolve the issues necessary for a long-term agreement have not met with the same success. The primary obstacle to such an agreement remains widely differing views about the formula for sharing the runs of Canadian-origin chinook and chum salmon, once those runs are rebuilt. The atmosphere for trying to resolve those differences also suffered as a result of continued declines in the resource itself.

The Interim Agreement lapsed at the end of March 1998. For our part, the United States was more than willing to extend the Interim Agreement, in light of the benefits it brought. Canada, however, was of the view that, until more progress was made toward a long-term agreement, the Interim Agreement was not worth extending beyond March 1998. Accordingly, no formal agreement between the United States and Canada concerning Yukon River salmon has been in effect for almost a year. However, the two countries have continued to cooperate on an informal level in the conservation and management of the salmon resource, while our negotiators are still exploring the possibility of either renewing the lapsed Interim

Agreement or negotiating a long-term agreement.

Notwithstanding the lapse of the Interim Agreement, the Department of State believes that Congress should reauthorize the Yukon River Salmon Act. It is important to life along the Yukon River Drainage that the United States and Canada reestablish some form of bilateral agreement in the near term. We also think that the modest level of funding provided pursuant to the Act should continue. However, in the absence of a Yukon River Panel, consideration will need to be given to an amendment to the Act for the purpose of creating an alternate mechanism for spending these funds for salmon restoration and enhancement projects.

Fishermen's Protective Act

I have relatively little activity to report under the Fishermen's Protective Act ("FPA"). As you know, Congress enacted the FPA to deter foreign governments from seizing U.S. fishing vessels based on claims to fisheries jurisdiction not recognized by the United States. The FPA also provides a mechanism for reimbursing losses incurred by U.S. fishing vessel owners whose boats are seized under such circumstances. Further, Section 8 of the FPA -- more commonly known as the Pelly Amendment -- requires the Secretaries of Commerce and Interior to certify to the President whether foreign nationals are diminishing the effectiveness of international conservation regimes. Certification under the Pelly Amendment authorizes, but does not require, the President to prohibit imports from the certified nation.

Prior to 1993, the FPA served mainly to reimburse losses incurred by U.S. tuna boat owners whose vessels were seized by foreign governments for fishing in areas between 12 and 200 nautical miles from their coasts. You will recall that, in those days, the United States maintained the position that coastal States did not have jurisdiction with respect to tuna fisheries beyond 12 nautical miles from shore. The vast majority of other countries took the position that coastal States had fisheries jurisdiction over all species, including tuna, out to 200 nautical miles from shore (i.e., within their exclusive economic zones). The FPA, in effect, shielded U.S. tuna boat owners from the economic consequences of this difference in position.

However, Congress amended the Magnuson Act (now the Magnuson-Stevens Act), effective in 1993 (Public Law 101-627) to assert U.S. jurisdiction over tuna within the U.S. EEZ, thus implicitly recognizing the legitimacy of the claims of other countries to the same jurisdiction. At that point, one of the primary purposes of the FPA no longer existed.

Still, we have since 1993 processed a number of claims made under the FPA by U.S. fishing vessel owners. In 1996, the Department reimbursed the owners of four U.S. fishing vessels seized by the Government of Costa Rica for merely transiting the Costa Rican EEZ without express permission. In 1997, the Department also reimbursed the owners of two U.S. scallop vessels seized by the Government of Canada for fishing for Icelandic scallops on Canada's continental shelf.

By far the most significant exercise of the FPA in recent years did not involve a seizure at all, at least not in the ordinary sense. In 1994, the Government of Canada imposed a fee of \$1,500 (Canadian) on U.S. salmon fishing vessels that wished to transit the Inside Passage of Canada between the waters of Washington State and Alaska. The United States vigorously protested these fees as violations of international law.

In response to the situation, Congress amended the FPA to allow U.S. vessel owners who had paid the fees to be reimbursed. The Department in fact reimbursed a total of 258 such claims, in the total amount of \$282,194.60. At every opportunity, we have also demanded that Canada reimburse the U.S. Government these amounts, but to no avail thus far.

The FPA established two separate funds through which fishermen could be reimbursed. The Fishermen's Protective Fund was designed to reimburse the owner of a seized fishing vessel for any direct charges paid to secure the release of the vessel and crew. The 1995 amendments to the FPA added a new Section 11 (22 USC 1980a) that specifically authorized the Department of State to reimburse vessel owners for fees charged by foreign governments for U.S. vessels exercising their rights of innocent passage under certain conditions. The amendments further instructed the Department to pay claims made under this section from the unexpended balance of the Fishermen's Protective Fund.

The transit fee claims (\$282,194.60) and the Icelandic scallop boat claims (\$10,000.00) were paid from this Fund. Appropriations are requested by the Department of State to replenish this fund on an "as needed" basis. Approximately \$638,500 remains unexpended in this fund, and there are no pending claims.

A second fund, the Fishermen's Guaranty Fund, is established to compensate U.S. fishing vessel owners who have entered into guaranty agreements with the U.S. Government for certain losses associated with the seizure and detention of their vessels by foreign countries. Losses covered by the Fund include: confiscation, spoilage, damage, lost fishing time, and other incidental costs. In effect, the Fund acts as a form of "seizure insurance" for fishermen who participate in it. The claims for the vessels detained by Costa Rica (\$186,000.00) were paid from this fund.

At one time, the FPA provided for two sources of funding for the Fishermen's Guaranty Fund: appropriations and an annual fee charged to fishing vessel owners who participate in the regime. The 1995 amendments to the FPA eliminated the authorization of appropriations to the Fund. No fishing vessel owners have applied for participation in the Fund for several years. Approximately \$2.8 million remains in the unexpended balance of this Fund. There are no pending claims.

The Department supports reauthorization of the FPA in order to maintain this useful vehicle for reimbursing U.S. fishing vessel owners whose boats may be seized illegally or who may be charged illegal fees by foreign governments in future years.

Agreement on Mutual Fisheries Relations

In 1988, the United States and the Soviet Union concluded the Agreement on Mutual Fisheries Relations. The primary purposes of this Agreement were: (1) to establish the basic terms and conditions under which fishing vessels from one Party could undertake fishing operations in waters under the jurisdiction of the other Party; and (2) to create a bilateral forum -- the Intergovernmental Consultative Committee on Fisheries ("ICC") -- in which to review on a regular basis those fisheries issues that were of mutual concern. Following the dissolution of the Soviet Union, the Russian Federation became our treaty partner with respect to this Agreement.

For purposes of the Magnuson-Stevens Act, the Mutual Fisheries Relations Agreement constitutes a "governing international fisheries agreement" or GIFA, and is thus subject to approval and extension in accordance with the provisions of the Magnuson-Stevens Act relating to GIFAs. The original 1988 agreement would have expired in 1993. Recognizing the value of the Agreement, the United States and Russia negotiated a five-year extension of the Agreement, with slight modifications. Congress approved the extension of the Agreement, with these modifications, in 1993.

It is now time -- indeed, slightly past time -- to extend the Agreement once again. The Agreement in fact lapsed at the end of 1998, due largely to delays in the newly reconstituted Russian Fisheries Committee in

responding to our requests to extend the Agreement. Nevertheless, the Russian Federation has at this point agreed to another 5-year extension and is urging the United States to do so as well.

The Department of State strongly supports another 5-year extension of the Agreement. This Agreement, and the ICC that it has created, has served U.S. interests well over the past decade. Under the auspices of the Agreement, the United States and Russia forged common positions for use in the negotiation with other countries of two multilateral treaties that are vital to the conservation and management of North Pacific fisheries, namely, the North Pacific Anadromous Stocks Convention and the Central Bering Sea Pollock Convention. The United States and Russia stood side by side in successfully pressing for these treaties, thanks in large part to our ability to harmonize our positions and develop joint strategies through the ICC.

More recently, the ICC has provided a critical forum in which U.S. Government officials and fishing industry representatives can meet with their Russian counterparts on an annual basis to review matters of common interest. The last such meeting took place in Seattle, Washington, from January 13-15, 1999. Among other things, the U.S. side took the opportunity of that meeting to press the Russian side for information on their fishery management practices in the Russian part of the Bering Sea, particularly regarding pollock and salmon.

The ICC has also recently allowed U.S. and Russian fisheries enforcement officials to strengthen a number of already successful initiatives to coordinate their activities. For example, in 1997 and 1998, the U.S. Coast Guard was able to provide an extensive array of data relating to fishing by Russian and third country vessels in areas near the U.S.-Russian maritime boundary. The Russian side informed us that, in an effort to reduce the numerous incursions across the boundary into the U.S. EEZ that occurred in 1997, they had instituted a 2-mile "buffer zone" on their side, within which fishing operations are prohibited. In 1998, Russia extended the buffer zone to 5 miles. The buffer zone seems to have yielded positive results, as there was only one reported incursion during all of 1998.

From even this brief description, Mr. Chairman, I think that you can see the continuing value of the Mutual Fisheries Relations Agreement. We accordingly urge Congress to approve its extension.

Thank you Mr. Chairman. I look forward to answering any questions that you and other members of the Subcommittee may have.

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